



The Feed

Recent Developments in Ag Law & Policy

The Feed highlights recent legal developments affecting agriculture, with issues released twice a month.

Volume 2, Issue 22

November 21, 2024

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JUNE 5-6

MID-SOUTH
Memphis, Tennessee

JUNE 19-20

WESTERN
Reno, Nevada

Farm Bill. On November 18, Senate Agriculture Chairwoman Debbie Stabenow released the long-awaited text of her draft Farm Bill. Highlights from **the 1,397-page document** include the movement of climate-related agriculture funding from the Inflation Reduction Act into the Farm Bill, a limitation on use of the Commodity Credit Corporation, a 5% increase in reference prices for the Price Loss Coverage program, and additional funding for nutrition programs. A summary of the bill is available **here**. While this makes the third draft Farm Bill that has been released this year, it appears unlikely that a new Farm Bill will be passed before the end of 2024. Senator Stabenow's bill has received criticism, and leaders in the House and Senate agriculture committees are discussing the possibility of creating an end-of-the-year aid package to fill the gap. Click **here** to view recent NALC articles breaking down themes of the various Farm Bill proposals that were introduced in 2024.

- Webinar opportunity (January 15): Hunt Shipman, Principal & Director, Cornerstone Government Affairs will present "Looking Ahead: Impact of the 2024 Elections on Ag Law and Policy." To register, click **here**.

National Environmental Policy Act. In a ruling issued earlier this month, a three-judge panel on the D.C. Circuit Court of Appeals found that the Council on Environmental Quality (CEQ) lacks authority to issue binding regulations. CEQ was created in 1969 as part of the National Environmental Policy Act (NEPA), which is considered the first major environmental statute in the United States. NEPA requires all federal agencies to undergo an environmental review process before taking certain agency actions. The text of NEPA specifies that CEQ shall advise the President on environmental matters and ensure that federal agencies comply with NEPA. However, NEPA does not specifically state that CEQ has authority to issue regulations. Instead, CEQ traces its rulemaking authority to two Presidential Executive Orders. According to the D.C. Circuit, only Congress can grant federal agencies the power to issue binding regulations. The lawsuit before the D.C. Circuit focused on whether federal agencies had violated NEPA by failing to complete environmental review before approving a plan to authorize air tours for four national parks. None of the parties raised any arguments related to CEQ's rulemaking authority. The decision has left many with more questions than answers. For more information, click **here** to view NALC article "D.C. Circuit Rules CEQ Lacks Rulemaking Authority."

Illinois River Pollution. A federal judge in Oklahoma rejected a motion filed by a coalition of poultry producers seeking an interlocutory appeal of a lower court's decision finding the producers caused pollution in the Illinois River Watershed (IRW). The judge has set a hearing date in early December, where a determination will be made regarding damages owed by the companies to the state. This case dates back nearly twenty years and began with allegations made by the state, claiming that Tyson, Cargill, and other producers caused pollution in the river via phosphorus and bacteria from poultry waste. Last year, the court ruled in favor of Oklahoma, finding that the poultry producers were responsible for causing "irreparable harm" to the IRW.

Monarch Butterfly. The U.S. Fish and Wildlife Service (FWS) has announced that it plans to issue a decision on whether to list the monarch butterfly under the Endangered Species Act (ESA) by no later than December 4. The effort to list the monarch butterfly under the ESA was initiated in 2014 when various environmental groups filed a petition asking FWS to list the species. In 2020, FWS concluded that listing the monarch was "warranted" but at that time precluded by other priorities. Four years later, a final listing decision is on the horizon. At the moment, it is unclear whether the monarch could be listed as "threatened" or "endangered." While either status would confer ESA protections to the monarch, a "threatened" designation would give FWS more authority to exempt certain actions such as normal agricultural activities from being considered "take" of a species. To learn more about possible impacts of listing the monarch, click **here** to view NALC article "To List or Not to List: Possible Consequences of the Monarch Butterfly's Final Listing Decision."

Marketing Orders. USDA's Agricultural Marketing Service (AMS) recently proposed amendments to pricing formulas in all 11 Federal milk marketing orders (FMMOS). This decision comes in response to a request for the reevaluation of said formulas by members of the dairy industry. Before these amendments take effect, AMS will be conducting producer referendums for all 11 FMMOS. These referendums will allow affected producers to provide input and feedback to AMS, ensuring a properly

informed decision. Finally, AMS will be hosting a series of webinars, starting November 19th, to provide further information on the proposed amendments. Click [here](#) for further information from AMS.

Beyond Meat. Following a class action lawsuit alleging misleading statements regarding the protein content in Beyond Meat products, the plant-based meat producer has agreed to a \$7.5 million settlement. This settlement will provide payouts to consumers who purchased a variety of Beyond Meat products between 2018 and 2024. Per the settlement, consumers can receive \$2 for each listed Beyond Meat product purchased during that window. For those without proof of purchase, there is a five item limit for claims. However, proof of purchase will be required for those attempting to claim more than five items. For more information on how to file a claim, click [here](#).

Treated Seeds. The California Department of Pesticide Regulation (DPR) and various environmental groups have reached a [settlement agreement](#) in a lawsuit that challenged DPR's decision not to regulate treated seeds - seeds that have been coated with a pesticide prior to planting - as a pesticide. According to the settlement agreement, DPR has until February 2026 to draft new rules to regulate treated seeds. Among other things, the new rules must consider whether treated seeds used or sold in California can only be treated with pesticide products registered by DPR for that purpose, and whether DPR can require mitigation of environmental and human health impacts caused by the use of treated seeds. The settlement agreement comes at a time when interest in regulating treated seeds has grown on both a state and federal level. Last year, several environmental groups filed a lawsuit against the Environmental Protection Agency (EPA) looking to close what the groups described as a "loophole" that allows treated seeds to avoid federal regulation. For more information, click [here](#) to view NALC article "EPA Faces Treated Seeds Lawsuit."

Pesticides: Dicamba. Senator Cory Booker, a member of the Senate Agriculture Committee, has [submitted a letter](#) to EPA requesting that the agency halt over-the-top use of dicamba. Specifically, the letter requests that EPA deny three petitions that are currently pending before the agency to reapprove three dicamba-based pesticide products that are meant to be applied directly onto soybean and cotton crops. Dicamba is considered to be a highly volatile product that has a tendency to evaporate into the air and travel far off-target. For that reason, dicamba has traditionally been applied as a burndown product in late winter. However, in 2016, EPA approved the first lower-volatility dicamba products that could be used over-the-top of crops during the growing season. Those products have proved highly controversial and since 2016, two courts have vacated the labels for over-the-top dicamba products. To learn more, click [here](#) to view NALC series "The Deal with Dicamba."

Pesticides: 1,3-D. California's DPR has proposed new regulations to create safeguards for farmworkers who face potential exposure to 1,3-D. This objective comes in response to pressure from environmentalists and will involve collaboration between the Department of Pesticide Regulation and CalEPA's Office of Environmental Health Hazard Assessment. The new proposal would mandate the use of impermeable tarps while using 1,3-D. DPR has opened a public comment period for the proposed regulations and will be hosting listening sessions throughout January. For more information on how to submit a comment, click [here](#).

Butter Recall. Food-giant Costco has issued a recall on nearly 80,000 pounds of butter sold from its stores. This decision stems from a mistake in labeling, which caused the affected products to omit "milk" as an ingredient. Dairy is one of the nine "major food allergens" that the Food and Drug Administration (FDA) requires to be disclosed on food labels. The massive recall is split between two different products, the Kirkland Signature Unsalted Sweet Cream Butter and the Kirkland Signature Salted Sweet Cream Butter. The FDA has designated this recall as a "Class II" recall, which means the product may "cause temporary or medically reversible adverse health consequences." For a list of the recalled lots, click [here](#). To learn more about the regulation of food allergens, click [here](#) to read NALC article "Food Labeling: The Regulation of Food Allergen Labels."

Peanut Drying Vehicles. The Eleventh Circuit Court of Appeals has determined that peanut drying vehicles are not "off-highway transportation vehicles" rendering them subject to federal excise taxes. The court's decision reverses a lower court ruling which had found that Georgia manufacturer Rockwater was exempt from paying certain taxes and penalties. Rockwater had claimed that its peanut trailers were off-highway transportation vehicles because the trailers had features that allowed them to be used in the field where they would be loaded with peanuts before driving to other locations. However, in its decision, the Eleventh Circuit reasoned that the unique design of the vehicles "has nothing to do with off-highway transportation." Instead, the court concluded that the drying trailers were "primarily designed for use on public roads" and therefore subject to excise taxes. Click [here](#) to read the court's decision.

Upside Foods. Attorneys for cultivated meat producer Upside Foods have filed a notice with the Eleventh Circuit Court of Appeals letting the court know that it plans to challenge a decision issued by a US District Court in Northern Florida. Upside Foods filed suit against the State of Florida in August, arguing that a new state law banning the sale of cell-cultivated meat is unconstitutional. Upside Foods asked the District Court to enjoin the law while the case was on-going, but the court declined. It is this decision that Upside Foods plans to appeal to the Eleventh Circuit. To learn more about Florida's cell-cultured meat ban, click [here](#) to view NALC article "Cell-Cultured Meat Updates: State Bans, Labeling Requirements, and Regulatory Clarifications."

Colorado River. The Department of Interior's Bureau of Reclamation has released five different alternatives for a new framework to govern Colorado River water cuts after the current framework expires in 2026. The proposals include a "no action" alternative where nothing would change, a second option that would release water from Lake Powell based on its elevation, a third option option that would base water cuts and releases on the elevations of both Lakes Powell and Mead, that would allow released from Lake Powell based on storage in reservoirs located in the Upper Colorado River Basin, and a final option that would base water releases primarily on the elevation of Lake Powell but with some consideration for the elevation of Lake Mead. Reclamation has announced that its next step is to conduct an environmental review of the proposed alternatives, with the goal of having a finalized record of decision available in 2026. To view Reclamation's proposal, click [here](#).



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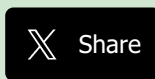


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